

Remarks

Applicant provisionally elects Invention II (claims 5-11). Applicant traverses and requests reconsideration of the restriction requirement, particularly in view of the amendments to claims 1-4.

Applicant respectfully suggests that the Commissioner has not met its burden of establishing a prima facie case that the inventions are independent or distinct. The two sets of claims cover variants of the same procedure, namely determining osteoinductivity of DBM via in vitro assay of BMP. Claims 1-4 and 5-11 are therefore directed to related processes. If Claims 5-11 properly fall within Class 435, Subclass 4, then claims 1-4 also fall within Class 435, Subclass 4.

The restriction requirement mentions only two distinctions between Inventions I and II, neither of which are substantive in nature. The Examiner stated that Invention I requires an aqueous solution of a neutral salt and an ELISA kit that is not required for Invention II, while Invention II requires the step of determining a level of a selected BMP that is not required for Invention I. However, the claims of Invention II require solubilizing BMP from the DBM to thereby obtain an unfiltered BMP containing solution, which is a variant of the aqueous solution. Likewise, the claims of Invention II require assaying the unfiltered BMP containing solution to determine a level of a selected BMP, which is a variant of the ELISA kit of Invention I. These variations in claim language do not provide a prima facie basis for concluding that applicant is claiming independent and distinct inventions.

There does not appear to be any basis for concluding that claims 1-4 and 5-11 have a different classification, have acquired a separate status in the art, are mutually exclusive, are not capable of use together, have a materially materially different design, mode of operation,

function, or effect, or any of the other criteria that might support a prima facie showing that the inventions as claimed are independent and distinct inventions.

For the foregoing reasons, applicant respectfully requests withdrawal of the restriction requirement.

It is believed that this response has been filed within the applicable time period and that no extension of time is required. However, if an extension of time is required, applicant petitions for an appropriate extension. It is believed that no fees are due. If any fees or credits are due, the Commissioner is authorized to charge or deposit the fees to Deposit Account No. 502795.

Respectfully submitted,

/Shawn D. Sentilles/

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